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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,712	09/05/2003	Gary Steven Moore	CFLAY.00205	8275

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EXAMINER	
TRAN LIEN, THUY	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

LD

Office Action Summary	Application No.	Applicant(s)	
	10/656,712	MOORE ET AL.	
	Examiner	Art Unit	
	Lien T Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 September 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-48* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-48* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claims 1-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: Step a is vague and indefinite. While the step recites forming wet granola dough, there is no recitation of granola ingredients. The term " dry ingredients" include many things which are not granola. Line 6, " said extruded granola mixture" does not have antecedent basis.

In claim 39, the phrase " encapsulated from the group consisting of " is unclear; it is suggested applicant --- with material selected --- before " from the group" to make the claim clearer.

Claim 42 has the same problem as claim 39.

Claim 45 is vague and indefinite. Claim 45 recites a filled granola piece made by the process of claim 34; however, claim 34 does not recite filling the granola piece.

Claim 46 is vague and indefinite. Step a recites mixing water with at least one dry ingredient to form a prehydrated cereal grain; however, the step does not recite that the dry ingredient is cereal grain. The term dry ingredient can include many different kinds of material which are not cereal grain. Step c is vague; it is not seen how a dough is formed from one cereal grain. Also, said wet granola dough does not have antecedent basis. Step e, " said extruded granola mixture" does not have antecedent basis.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim 26 is rejected under 35 U.S.C. 102(b) as being anticipated by Linscott.

Linscott discloses a chewy granola bar which comprises dry ingredients, binder syrup and water. (see col. 2 lines 1-40 and columns 5-6).

The Linscott product differs from the claimed product in the way that it is made; however, determination of patentability in " product-by-process claim is based on the product itself, even though such claim is limited and defined by process. (See In re Thorpe 227 USPQ 964)

Claim 35 is rejected under 35 U.S.C. 102(e) as being anticipated by Sirohi et al.

Sirohi et al disclose a food bar comprising dry ingredients, binder syrup and water. The bar has a water content of from 1-7%. (see col. 4 lines 20-64)

Since the product has the water content within the range claimed, it is inherent the product is a crunchy granola. The Sirohi et al product differs from the claimed product in the way that it is made; however, determination of patentability in "

product-by-process claim is based on the product itself, even though such claim is limited and defined by process. (See In re Thorpe 227 USPQ 964)

Claim 45 is rejected under 35 U.S.C. 102(b) as being anticipated by Bailey.

Bailey discloses a filled granola snack bar. The bar comprises dry ingredients, water, and binding surup. The bar can comprise filling to make filled bar. (see col. 3 lines 1-3 and example 4)

The Bailey product differs from the claimed product in the way that it is made; however, determination of patentability in " product-by-process claim is based on the product itself, even though such claim is limited and defined by process. (See In re Thorpe 227 USPQ 964)

Claims 1-25, 27-34, 36-44 and 46-48 are free of prior art. While the prior art teached extruding dough to make food bar, there is no teaching of the step of resting the dough for at least 1 hour or at least ½ hour before extruding the dough.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Wed-Fri.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 4, 2005

Lien Tran

LIEN TRAN
PRIMARY EXAMINER

Group 1700